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**FILED**

JAN 27 2015

RICHARD W. WIEKING,  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CLARENCE L. HEARNS, ) No. C 14-4482 LHK (PR)  
Plaintiff, ) ORDER DISMISSING CASE  
v. ) WITH LEAVE TO AMEND  
A. HEDGPETH, et al., )  
Defendants. )

Plaintiff, a California state prisoner proceeding *pro se*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff is granted leave to proceed in forma pauperis in a separate order. For the reasons stated below, the court dismisses the complaint with leave to amend.

**DISCUSSION**

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1), (2). *Pro se* pleadings must, however, be liberally construed. *See Balistreri v.*

1     *Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

2         To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:  
 3         (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that  
 4         the alleged deprivation was committed by a person acting under the color of state law. *West v.*  
 5         *Atkins*, 487 U.S. 42, 48 (1988).

6     B.     Plaintiff's Claims

7             According to the complaint, in May 2010, plaintiff had filed a state habeas petition  
 8         regarding some missing legal and personal property. The state court judge ordered Warden  
 9         Hedgpeth and Warden Harrington to locate plaintiff's property. Eventually plaintiff's property  
 10         card from Salinas Valley State Prison ("SVSP") was submitted to the state court, stating that  
 11         petitioner had received all of his property. On July 30, 2010, defendants Warden Hedgpeth and  
 12         SVSP Correctional Sergeant B. Jansen wrote a memorandum, the contents of which plaintiff  
 13         does not specify. On September 12, 2010, B. Jansen received all ten boxes of plaintiff's property  
 14         but instructed the staff to only issue three boxes of the personal property to plaintiff and not tell  
 15         plaintiff that "they" had the seven boxes containing plaintiff's legal property. On some  
 16         unspecified date thereafter, plaintiff's federal habeas petition filed in a different district was  
 17         denied.

18             On January 3, 2014, plaintiff requested the litigation office at SVSP to preserve his  
 19         documents received at SVSP. On March 28, 2014, defendant Correctional Officer Silva was  
 20         instructed to transfer the 7 boxes of plaintiff's legal property to the California Substance Abuse  
 21         Treatment Facility, plaintiff's current place of incarceration.

22             At some point, plaintiff learned that SVSP had taken possession of these 7 boxes of legal  
 23         property on September 9, 2010, but never notified plaintiff or the state court. Plaintiff alleges  
 24         that in 2012, defendant B. Jansen lied in two responses to interrogatories in an unspecified  
 25         lawsuit.

26             To the extent plaintiff is attempting to raise a due process claim, the facts alleged do not  
 27         support such a claim. Here, plaintiff alleges that once the prison received plaintiff's ten boxes of  
 28         property, B. Jansen intentionally did not issue seven out the ten boxes to plaintiff, and instructed

1 his staff not to inform plaintiff that the prison possessed those seven boxes. Ordinarily, due  
 2 process of law requires notice and an opportunity for some kind of hearing prior to the  
 3 deprivation of a significant property interest. *See Memphis Light, Gas & Water Div. v. Craft*,  
 4 436 U.S. 1, 19 (1978). However, the intentional deprivation of property does not state a due  
 5 process claim under Section 1983 if the deprivation was unauthorized, and a meaningful post-  
 6 deprivation remedy is available. *See Hudson v. Palmer*, 468 U.S. 517, 533 (1984) (“we hold that  
 7 an unauthorized intentional deprivation of property by a state employee does not constitute a  
 8 violation of the procedural requirements of the Due Process Clause of the Fourteenth  
 9 Amendment if a meaningful postdeprivation remedy for the loss is available”). This is because  
 10 “[t]he state can [not] anticipate and control in advance the random and unauthorized intentional  
 11 conduct of its employees,” making pre-deprivation procedures impracticable. *Id.* Here, the  
 12 availability of an adequate state post-deprivation remedy, e.g., a state tort action, precludes relief  
 13 because it provides sufficient procedural due process. *See Zinermon v. Burch*, 494 U.S. 113, 128  
 14 (1990) (where state cannot foresee deprivation, a statutory provision for post-deprivation hearing  
 15 or common law tort remedy for erroneous deprivation satisfies due process). California state tort  
 16 law provides such an adequate post-deprivation remedy. *See Barnett v. Centoni*, 31 F.3d 813,  
 17 816-17 (9th Cir. 1994) (citing Cal. Gov’t Code §§ 810-895). Thus, to the extent plaintiff is  
 18 asserting a due process claim, it is DISMISSED with prejudice.

19 Plaintiff’s complaint is deficient. Plaintiff has not provided the court with sufficient  
 20 information necessary to determine what plaintiff’s claim for relief is against any defendant.  
 21 “While a complaint . . . does not need detailed factual allegations, . . . a plaintiff’s obligation to  
 22 provide the ‘grounds of his ‘entitle[ment] to relief’ requires more than labels and conclusions,  
 23 and a formulaic recitation of the elements of a cause of action will not do. . . . Factual  
 24 allegations must be enough to raise a right to relief above the speculative level.” *Bell Atlantic*  
 25 *Corp. v. Twombly*, 550 U.S. 544, 553-56, (2007) (citations omitted). A complaint should be  
 26 dismissed if it does not proffer “enough facts to state a claim for relief that is plausible on its  
 27 face.” *Id.* at 570. Plaintiff must allege that: (1) that a right secured by the Constitution or laws  
 28 of the United States was violated, and (2) that the alleged deprivation was committed by one

1 acting under the color of state law. *See West*, 487 U.S. at 48.

2 Plaintiff will be granted leave to amend to allege specifics. In his amended complaint, he  
3 must establish legal liability of each person for the claimed violation of his rights. Liability may  
4 be imposed on an individual defendant under section 1983 if the plaintiff can show that the  
5 defendant proximately caused the deprivation of a federally protected right. *See Leer v. Murphy*,  
6 844 F.2d 628, 634 (9th Cir. 1988). A person deprives another of a constitutional right within the  
7 meaning of section 1983 if he does an affirmative act, participates in another's affirmative act or  
8 omits to perform an act which he is legally required to do, that causes the deprivation of which  
9 the plaintiff complains. *Id.* at 633. Sweeping conclusory allegations will not suffice; plaintiff  
10 must instead "set forth specific facts as to each individual defendant's" deprivation of protected  
11 rights. *Id.* at 634.

12 Accordingly, the complaint is DISMISSED WITH LEAVE TO AMEND. Plaintiff will  
13 be provided with thirty days in which to correct the deficiencies in his complaint as stated above.

14 **CONCLUSION**

15 For the foregoing reasons, the Court hereby orders as follows:

16 1. Plaintiff's complaint is DISMISSED with leave to amend.  
17 2. If plaintiff can cure the pleading deficiencies described above, he shall file an  
18 AMENDED COMPLAINT within **thirty days** from the date this order is filed. The amended  
19 complaint must include the caption and civil case number used in this order (C 14-4482 LHK  
20 (PR)) and the words AMENDED COMPLAINT on the first page. The amended complaint must  
21 indicate which specific, named defendant(s) was involved in each cause of action, what each  
22 defendant did, what effect this had on plaintiff and what right plaintiff alleges was violated.  
23 Plaintiff may not incorporate material from the prior complaint by reference. If plaintiff files an  
24 amended complaint, he must allege, in good faith, facts - not merely conclusions of law - that  
25 demonstrate that he is entitled to relief under the applicable federal statutes. **Failure to file an**  
26 **amended complaint within thirty days and in accordance with this order will result in a**  
27 **finding that further leave to amend would be futile, and this action will be dismissed.**

28 3. Plaintiff is advised that an amended complaint supersedes the original complaint.

1 “[A] plaintiff waives all causes of action alleged in the original complaint which are not alleged  
2 in the amended complaint.” *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir. 1981).  
3 Defendants not named in an amended complaint are no longer defendants. *See Ferdik v.*  
4 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992).

5       4. It is the plaintiff’s responsibility to prosecute this case. Plaintiff must keep the  
6 court informed of any change of address by filing a separate paper with the Clerk headed “Notice  
7 of Change of Address,” and must comply with the court’s orders in a timely fashion. Failure to  
8 do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule  
9 of Civil Procedure 41(b).

10      IT IS SO ORDERED.

11 DATED: 1/26/15

LUCY H. KOH  
LUCY H. KOH  
United States District Judge

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